

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IpLearn, LLC,

Plaintiff,

v.

LearnShare, L.L.C.,

Defendant.

Civil Action No. 11-896-LPS

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT

Plaintiff IpLearn, LLC ("IpLearn") alleges as follows:

PARTIES

1. IpLearn is a California limited liability company with its principal place of business at 1807 Limetree Lane, Mountain View, California 94040. IpLearn is a technology development and licensing company for web and computer-based learning technologies.

2. IpLearn has been a pioneer in the field of web and computer-based learning technologies. Its innovations have been adopted extensively in the eLearning community, and its patents have been widely licensed in the industry.

3. On information and belief, Defendant LearnShare, L.L.C. ("LearnShare") is a Delaware corporation with its principal place of business at 1 Seagate, Suite 690, Toledo, Ohio 43604. LearnShare has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 198081, as its agent for service of process.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, including § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391 (b)-(c) and 1400(b) because LearnShare is subject to personal jurisdiction in this district, has committed acts of

patent infringement in this district, or has a regular and established place of business in this district.

COUNT I

(Infringement of U.S. Patent No. 6,398,556)

6. IpLearn alleges and incorporates by reference paragraphs 1-5 of this Complaint as if fully set forth herein.

7. IpLearn is the owner by assignment of United States Patent No. 6,398,556 ("the '556 patent"), entitled "Inexpensive Computer-Aided Learning Methods and Apparatus for Learners." The '556 patent issued on June 4, 2002. A true and correct copy of the '556 patent is attached hereto as Exhibit A. On June 12, 2007, the U.S. Patent and Trademark Office issued a reexamination certificate for the '556 patent.

8. Defendant LearnShare has infringed and is infringing one or more claims of the '556 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing computer-aided learning services and products that, for example, permit learning users to access materials for learning and institute users to access materials regarding learning users, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System. After being served with the Complaint in this action, LearnShare has knowingly contributed to the infringement, and continues to contribute to the infringement, of one or more of the claims of the '556 patent, by making and unlawfully selling or offering to sell to customers computer-aided learning services and products that, for example, permit learning users to access materials for learning and institute users to access materials regarding learning users, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System, that constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, after being served with the Complaint in this action, LearnShare has induced infringement, and continues to induce infringement, of one or more of the claims of the '556 patent, by making and unlawfully selling or offering to sell to customers

software products or services, including without limitation its LearnShare Talent Management Suite and, in particular, its Learning Management System, with specific intent that these software products or services be used by LearnShare customers to infringe the '556 patent.

9. As a result of LearnShare's infringement of the '556 patent, IpLearn has been irreparably harmed and has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm and damages in the future unless LearnShare, and others acting on its behalf, are enjoined by this Court from infringing the '556 patent.

COUNT II

(Infringement of U.S. Patent No. 6,118,973)

10. IpLearn alleges and incorporates by reference paragraphs 1-5 of this Complaint as if fully set forth herein.

11. IpLearn is the owner by assignment of United States Patent No. 6,118,973 ("the '973 patent"), entitled "Methods and Apparatus to Assess and Enhance a Student's Understanding in a Subject." The '973 patent issued on September 12, 2000. A true and correct copy of the '973 patent is attached hereto as Exhibit B.

12. Defendant LearnShare has infringed and is infringing one or more claims of the '973 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing computer-aided learning services and products for assessing a student's understanding in a subject by, for example, accessing the student's latest and prior-to-the-latest test results on an area within the subject to generate a recommendation, which provides an assessment on the student's understanding in the subject, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System. After being served with the Complaint in this action, LearnShare has knowingly contributed to the infringement, and continues to contribute to the infringement, of one or more of the claims of the '973 patent, by making and unlawfully selling or offering to sell to customers computer-aided learning services and products for assessing a student's understanding in a subject by, for example, accessing the student's latest and prior-to-the-latest test results on an area within the

subject to generate a recommendation, which provides an assessment on the student's understanding in the subject, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System, that constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, after being served with the Complaint in this action, LearnShare has induced infringement, and continues to induce infringement, of one or more of the claims of the '973 patent, by making and unlawfully selling or offering to sell to customers computer-aided learning services and products for assessing a student's understanding in a subject by, for example, accessing the student's latest and prior-to-the-latest test results on an area within the subject to generate a recommendation, which provides an assessment on the student's understanding in the subject, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System, with specific intent that these software products or services be used by LearnShare customers to infringe the '973 patent.

13. As a result of LearnShare's infringement of the '973 patent, IpLearn has been irreparably harmed and has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm and damages in the future unless LearnShare, and others acting on its behalf, are enjoined by this Court from infringing the '973 patent.

COUNT III

(Infringement of U.S. Patent No. 6,126,448)

14. IpLearn alleges and incorporates by reference paragraphs 1-5 of this Complaint as if fully set forth herein.

15. IpLearn is the owner by assignment of United States Patent No. 6,126,448 ("the '448 patent"), entitled "Computer-Aided Learning Methods and Apparatus for a Job." The '448 patent issued on October 3, 2000. A true and correct copy of the '448 patent is attached hereto as Exhibit C.

16. Defendant LearnShare has infringed and is infringing one or more claims of the '448 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to

sell, or importing computer-aided learning and counseling services and products for preparing a user for a job position by, for example, providing learning materials relating to the job position, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System and Talent & Succession software. After being served with the Complaint in this action, LearnShare has knowingly contributed to the infringement, and continues to contribute to the infringement, of one or more of the claims of the '448 patent, by making and unlawfully selling or offering to sell to customers computer-aided learning and counseling services and products for preparing a user for a job position by, for example, providing learning materials relating to the job position, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System and Talent & Succession software, that constitute a material part of the invention and are not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, after being served with the Complaint in this action, LearnShare has induced infringement, and continues to induce infringement, of one or more of the claims of the '448 patent, by making and unlawfully selling or offering to sell to customers computer-aided learning and counseling services and products for preparing a user for a job position by, for example, providing learning materials relating to the job position, including but not limited to its LearnShare Talent Management Suite and, in particular, its Learning Management System and Talent & Succession software, with specific intent that these software products or services be used by LearnShare customers to infringe the '448 patent.

17. As a result of LearnShare's infringement of the '448 patent, IpLearn has been irreparably harmed and has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm and damages in the future unless LearnShare, and others acting on its behalf, are enjoined by this Court from infringing the '448 patent.

PRAYER FOR RELIEF

IpLearn prays for the following relief:

1. A judgment that LearnShare has infringed, directly or indirectly, one or more claims of the patents-in-suit;
2. A permanent injunction enjoining LearnShare and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing patents-in-suit;
3. An award of damages resulting from LearnShare's acts of infringement in accordance with 35 U.S.C. § 284;
4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to IpLearn its reasonable attorneys' fees against LearnShare;
5. A judgment and order requiring LearnShare to provide an accounting and to pay supplemental damages to IpLearn, including without limitation, pre-judgment and post-judgment interest; and
6. Any and all other relief to which IpLearn may show itself to be entitled.

DEMAND FOR JURY TRIAL

IpLearn demands a trial by jury on all issues so triable.

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